IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

OP.No. 14564 of 2002(H)

PETITIONER:

SITARAM TEXTILES LTD., PUNKUNNAM, THRISSUR-680 002, REPRESENTED BY ITS GENERAL MANAGER.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA

RESPONDENTS:

1. **THE STATE OF KERALA REPRESENTED BY SECRETARY, LABOUR & REHABILITATION AND THE AUTHORITY SPECIFIED UNDER SECTION 25N OF THE INDUSTRIAL DISPUTES ACT, 1947,THIRUVANANTHAPURAM.**

2. **SRI.KRISHNANKUTTY A., AVANALLY HOUSE, THALAVANNIKKARA, THALORE P.O., OLLUR-680 306.**

3. **SMT.BHAVANI C.R., ADARSH, RICE MILL ROAD, NELLENKARA, NETTISSERY P.O., THRISSUR-680 657.**

4. **SMT.KUMARI N., THULASIDALAM, PANTHALATH LANE, KANATTUKARA P.O.,THRISSUR-680 011.**

5. **SMT.A.K.SUBAIDA, KEEPILLIKUDIYIL HOUSE, VIKAS NAGAR, PERINGAV P.O., THRISSUR DISTRICT.**

6. **SMT.P.K.NALINI, W/O.K.R.KRISHNAKUMAR, KOTTILVALAPPIL HOUSE, NEAR NETHAJI GROUND, ARANATTUKARA P.O., THRISSUR-680 618.**

BY ADV. SRI.P.RAMAKRISHNAN for R2
SRI.K.A.ABRAHAM for R5 & R6
SRI.S.S.NAIR
BY SR.GOVERNMENT PLEADER SRI. SURARSHAN for R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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O.P.No.14564 of 2002

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Dated this the 11th day of January, 2007

J U D G M E N T

The petitioner is a Government company, which ran into very serious financial trouble. Therefore, they wanted to retrench some of the workmen. Accordingly, they filed Ext.P1 application before the Government for permission to retrench the workmen under Section 25N of the Industrial Disputes Act since they employed workers in excess of 250. The Government did not take action on the same. Therefore, by virtue of the deeming provisions of the Act, the company retrenched the employees after expiry of 60 days from the date of the application. Some of the employees filed writ petitions before this court challenging the said retrenchment in which by Ext.P4 judgment a learned Single Judge of this court directed the Government to consider the

application filed by the petitioner under Section 25N(4) of the Industrial Disputes Act on merits. The Government considered the matter and passed Ext.P6 order granting permission to the petitioner to retrench the employees. This was challenged by some of the workers again before this court. In that original petition workmen raised a contention that the workmen were not heard under Section 25N (3) of the Industrial Disputes Act. But the learned Judge who passed Ext.P8 judgment held that the petitioners cannot be heard to contend that they were not heard when the unions which represented them were in fact heard. Accordingly, the original petition was dismissed, giving opportunity to the petitioners to move the Government under Section 25N(6) of the Industrial Disputes Act. The matter was taken up in appeal before the Division Bench which, by Ext.P9 judgment, confirmed Ext.P8 judgment. Thereafter, the petitioner herein filed an application for review under Section 25N(6) of the Industrial Disputes Act, in which the

Government passed Ext.P10 order holding thus:

> "I have considered the arguments of both the workmen and the management and examined the relevant records. I find that the contentions of the retrenched persons, that they were not given an opportunity of being heard and that section 25 N, 25N(2) and 25 N(3) of the Industrial Dispute Act have not been complied with, are valid. I am inclined to conclude that the retrenched persons viz., Smt.Bhavani.C.R, Smt.N.Kumari, Sri.A.Krishnankutty, Smt.A.K.Subaida and Smt.P.K.Nalini deserve to be reinstated with immediate effect. The request of the retrenched personnel are disposed accordingly with direction to the management to reinstate them with immediate effect."

This order is under challenge in this original petition on several grounds.

2. Before going into the merits of the contentions, I must note some subsequent developments. Since the petitioners were not able to get a stay of Ext.P10 in this original petition they had reinstated the workmen. Out of them, except the 6th respondent, all other party respondents, namely respondents 2 to 5 opted for voluntary retirement from service on 30.4.2004 which was accepted by the petitioner and they have already retired from service. Only the 6th respondent is still in service. However, claim petition Nos.51/2002 and 124/2004 have been filed

by the workers for wages during the period when they were kept out of service pursuant to the initial permission granted for retrenchment and also for difference in wages during the subsequent period after reinstatement. But for the same, the petitioner would have been happy to close the matter as such. But in view of the pendency of the claim petitions they are forced to contest the matter on merits. Learned counsel submits, in this context, that reinstatement was without prejudice to their contentions in this original petition. The matter was heard fully some time back. At that time I suggested a settlement between the parties on the terms that the workers would not press their claim petitions and the management would not press their original petition, but only the respondents 5 and 6 were willing to accept that compromise and respondents 2 to 4 insisted on a decision on merits. In the said circumstances, I have no option but to consider the case on merits at least in respect of respondents 2 to 4.

3. First of all I find that the finding by the Government that the retrenched persons were not heard itself is perverse since it is the Government itself who have to hear the retrenched persons. Of course, the learned counsel for respondents 2 to 4 would contend that the Government has mentioned that reason only to set aside the earlier order and not otherwise. Even assuming that to be so, in the light of the earlier judgment of this court on the same subject matter between the same parties, I do not think that the Government could have set aside the earlier order on the ground that individual workmen were not heard when this court had categorically held that since the unions representing them were actually heard they cannot be heard to contend so. The workmen could not raise a contention that they were not separately heard.

4. The second ground, viz., violation of Section 25N, 25N(2) and 25N(3) also would be covered by that reasoning. 25N(2) says that an

application for retrenchment under Section 1 shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application has also to be served simultaneously on the workmen concerned in the prescribed manner. In the earlier judgments, this court had held that copies of the application were actually served on the unions concerned and that that would be sufficient compliance with Section 25N. Further, in Ext.P4 judgment this court had specifically directed the Government to consider the application filed by the petitioner under Section 25N(4) of the Act on merits and dispose of the same. The same is the case with the finding on violation of Sub Section 3 of Section 25N. There also what is contemplated is a hearing of both employer and the workmen. This court already held that hearing granted to the unions would be sufficient compliance and the workmen cannot now be heard to contend otherwise. Since those judgments have become final, I am

unable to understand what the author of Ext.P10 meant by violation of Section 25N. No reasoning regarding the same is also gatherable from Ext.P10.

5. In any event, it cannot be disputed that the Government did not have powers under Section 25N to direct reinstatement of the retrenched workmen. The only jurisdiction the Government had under Section 25N was either to grant or refuse to grant permission to retrench the workmen or refer the matter for adjudication by the Industrial Tribunal. In the above circumstances, I am not satisfied that Ext.P10 is sustainable. Normally the natural consequence of setting aside Ext.P10 would be to restore Ext.P6 which would result in setting at naught reinstatement of the workmen themselves. But I do not think that in the facts and circumstances of the case, I should take that course especially in view of the fact that respondents 2 to 5 have already opted for voluntary retirement which has been accepted by the company and respondents 5 and 6 have already agreed to the

suggestion from this court that they would forgo their claims in the claim petitions pending before the Labour Court. In the above circumstances, I need only say that other workers also would not be entitled to claim any other benefits than what they have already received after the reinstatement as per Ext.P10. To put it explicitly they would not be entitled to any relief in the claim petitions pending before the Labour Court. With the above directions, the original petition is disposed of making it clear that Ext.P10 would be effective only to the extent stated herein-before and not for any other purpose.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

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J U D G M E N T

11th January, 2007